

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of GONZALEZ, Minors.

UNPUBLISHED

August 13, 2013

No. 314241

Kalamazoo Circuit Court

Family Division

LC No. 2010-000304-NA

Before: WHITBECK, P.J., and OWENS and M.J. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(ii) and (g). We affirm.

Respondent first argues that the trial court clearly erred in finding that two statutory grounds for termination were established in this case. To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been proven by clear and convincing evidence and that termination is in the best interests of the children. MCL 712A.19b(5). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

MCL 712A.19b(3)(c)(ii) states that termination is proper if:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence finds either of the following:

* * *

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

In this case, the initial dispositional order was issued on November 19, 2010. The termination hearing was held on December 4 and 6, 2012, which was more than 182 days since the initial dispositional order was issued. The “other condition” that the trial court found that caused the minor children to come within the court’s jurisdiction was respondent’s continuing criminality, which was primarily related to drug abuse. To address that criminality, respondent was offered services in the form of case management, a substance abuse assessment, a psychological assessment, and drug screens. Thus, respondent received the required recommendations to rectify the condition. Also, respondent received notice of the hearing where evidence of his continuing criminality was first admitted before the trial court.

In regard to whether respondent had a reasonable opportunity to rectify his criminality related to drug abuse, respondent argues that he needed more time to participate in and benefit from services because he was on waiting lists for services in prison¹. However, respondent was first offered services to address his drug abuse in the fall of 2010, and respondent had two other opportunities when he was not incarcerated to participate in services, but he simply chose not to take advantage of those opportunities.

In regard to whether respondent rectified his criminality or whether his criminality would be rectified within a reasonable time, respondent does not argue on appeal that he successfully addressed his drug abuse and, in fact, the record demonstrates that he did not. Instead, he essentially argues that he could have rectified his criminality within a reasonable time. However, respondent complied with none of the services provided to him except for parenting time, and there is no indication that respondent made any progress with his drug abuse during this lengthy proceeding. Moreover, a reasonable length of time is not only calculated by how long it would take for the parent to rectify the improper conditions, but also by the length of time the child can afford to wait for the parent. See *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991). On appeal, respondent suggests that the trial court erred by not waiting until at least February 28, 2014 (his earliest release date) for him to complete services and be released from prison. However, because this case had already lasted two years, the trial court’s finding that it was not reasonable for the children to wait approximately 15 additional months for respondent’s release was not clearly erroneous. MCR 3.977(K). The trial court did not clearly err in finding a statutory ground for termination of respondent’s parental rights under MCL 712A.19b(3)(c)(ii). MCR 3.977(K); *Trejo*, 462 Mich at 356-357.

Regarding MCL 712A.19b(3)(g), termination is proper where the parent fails to provide proper care or custody and there is no reasonable expectation that the parent will be able to provide it within a reasonable time considering the child’s age. In this case, respondent failed to take advantage of multiple opportunities to address his drug abuse and provide proper care and custody for the minor children. Based on respondent’s history of failing to provide proper care and custody, and his failure to work on his treatment plan when able to do so, the trial court did not clearly err in finding a statutory ground for termination of respondent’s parental rights under

¹ Respondent could not participate in those services until six months before February 28, 2014, his earliest release date.

MCL 712A.19b(3)(g). MCR 3.977(K); *Trejo*, 462 Mich at 356-357; *In re Archer*, 277 Mich App 71, 75-76; 744 NW2d 1 (2007).

Respondent also argues that the trial court erred when it found that termination of his parental rights was in the minor children's best interests. A trial court's finding that termination is in a child's best interests is reviewed under the preponderance of the evidence standard. *In re Moss*, ___ Mich App ___; ___ NW2d ___ (2013), slip op at 6.

On appeal, respondent correctly notes that evidence showed that a bond between the minor children and respondent existed in this case; however, this is just one factor that a trial court may consider, but is not required to, in determining the child's best interests. See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004). Thus, although the trial court did not explicitly address the parent/child bond in determining the minor children's best interests, it relied upon other factors, such as the minor children's progress in foster care and the children's need for permanence and stability. The record factually supported those two factors, which the trial court is allowed to consider. See *id.*; *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). The trial court's decision that termination was in the children's best interests was supported by evidence from the whole record. See *Trejo*, 462 Mich at 353. Accordingly, the trial court did not clearly err in finding that termination of respondent's parental rights was in the minor children's best interests. MCR 3.977(K); *Trejo*, 462 Mich at 356-357.

Affirmed.

/s/ William C. Whitbeck
/s/ Donald S. Owens
/s/ Michael J. Kelly